



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1995

Ms. Sheree L. Rabe
Assistant City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR95-297

Dear Ms. Rabe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32803.

The City of Georgetown (the "city") received a request for "all written reports filed by officers of the Georgetown Police Department in connection with their investigations of the offense(s) occurring at 3012 Whisper Oaks Drive, Unit I, Georgetown, Texas, on March 21, 1995." The city claims that the requested information is excepted from required public disclosure under section 552.108 of the Government Code.

Section 552.108 provides that:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

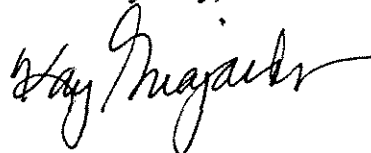
Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information which relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public).

You contend that all of the requested information except the front page of the offense report is excepted under section 552.108. You say the county attorney "may be filing charges." We conclude the city must release the first page offense report information. We remind the city that it is the *type* of information contained in the offense/incident report not the placement of the information on the "front page" that is determinative of whether the information must be released pursuant to the *Houston Chronicle Publishing Co.* case. See Open Records Decision No. 394 (1983). Thus, the city must release all first page offense report information including that that appears in the supplement to the report. The remaining information may be withheld under section 552.108 of the Government Code.

Should the county attorney decide he or she will not file charges in this case, the city may not withhold the reports pursuant to section 552.108, unless the city establishes that their release would unduly interfere with law enforcement or prosecution. See Open Records Decision No. 616 (1993). The city does not assert that the release of the reports once the case is closed will unduly interfere with law enforcement. Thus, the city may not withhold the report under section 552.108, if the county attorney decides not to prosecute.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/LBC/rho

Ref: ID# 32803

Enclosures: Submitted documents

cc: Ms. Julia E. Fryer
c/o James Fryer
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(w/o enclosures)